Rule 802. The Rule Against Hearsay.

Hearsay is not admissible unless any of the following provides otherwise:

- an applicable constitutional provision or statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Comment on 2012 Amendment

The language of Rule 802 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

NOTE: On March 8, 2004, the United States Supreme Court decided *Crawford v. Washington,* 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), which greatly changed the law in determining whether admission of certain hearsay statements violated the confrontation clause. Cases decided prior to that date holding that admission of certain statements did not violate the confrontation clause therefore may no longer be good law.

Cases

802.010 Evidence that is hearsay is inadmissible.

Higgins v. Higgins, 194 Ariz. 266, 981 P.2d 134, ¶¶ 27–29 (Ct. App. 1999) (father's testimony of what his mother told him children told her was double hearsay, and because neither level came under some hearsay exception, trial court should not have admitted testimony).

Cervantes v. Rijlaarsdam, 190 Ariz. 396, 949 P.2d 56 (Ct. App. 1997) (trial court allowed defendants to question plaintiff about letter from plaintiff's former employer; because letter was hearsay, trial court did not err in precluding defendants from reading letter).

Keith Equip. v. Casa Grande Cotton Fin., 187 Ariz. 259, 928 P.2d 683 (Ct. App. 1996) (trial court erred in admitting hearsay statement merely because declarant was available).

802.015 Hearsay evidence is admissible as provided by applicable statute.

In re Juv. Action No. JS–7499, 163 Ariz. 153, 156–57, 786 P.2d 1004, 1007–08 (Ct. App. 1989) (father was convicted of rape and sodomy upon his daughter; in action to terminate father's parent-child relationship with daughter, trial court properly allowed admission in evidence transcript of daughter's testimony at father's trial on rape and sodomy charges).

802.020 Sixth Amendment right to confront and cross-examine the witness applies only in criminal proceedings, and does not apply in civil proceedings.

In re Juv. Action No. JS–7499, 163 Ariz. 153, 157–59, 786 P.2d 1004, 1008–10 (Ct. App. 1989) (father was convicted of rape and sodomy upon his daughter; in action to terminate father's parent-child relationship with daughter, trial court allowed admission in evidence transcript of daughter's testimony at father's trial on rape and sodomy charges; father contended this violated his right of confrontation; court noted that proceeding to terminate parental rights is civil in nature, and held that right of confrontation did not apply; court further held that,

because father had opportunity to cross-examine daughter at criminal trial, admission of transcript of her testimony did not violate his due process right to cross-examine witness).

802.035 Although a defendant is entitled to a hearing on a motion to redetermine the conditions of release under Rule 7.4(b) of the Arizona Rules of Criminal Procedure, Rule 7.4(c) provides the trial court may make release determinations based on evidence not admissible under the Rules of Evidence.

Mendez v. Robertson (State), 202 Ariz. 128, 42 P.3d 14, ¶ 10 (Ct. App. 2002) (trial court properly considered prosecutor's avowals of what victim would say, and defendant did not have right to cross-examine victim).

802.050 The Arizona Legislature is permitted to enact a statute allowing the admission of hearsay provided the statute is reasonable and workable and supplements the rules promulgated by the Arizona Supreme Court.

State v. Vincent, 159 Ariz. 418, 768 P.2d 150 (1989) (A.R.S. § 13-4252, which allows for the presentation of videotaped testimony, is constitutional and admission of such testimony is permissible as long as the trial court makes the necessary findings).

In re Maricopa Cty. Juv. No. JD-6123, 191 Ariz. 384, 956 P.2d 511 (Ct. App. 1997) (Juvenile Rule 16.1(f) is a reasonable and workable supplement to the Arizona Rules of Evidence).

802.055 Although the Arizona Legislature is permitted to enact a statute allowing the admission of hearsay provided the statute is reasonable and workable and supplements the rules promulgated by the Arizona Supreme Court, if a conflict arises, or a statutory rule tends to engulf a rule the court has promulgated, the court rule will prevail.

State v. Taylor, 196 Ariz. 584, 2 P.3d 674, ¶¶ 4-11 (Ct. App. 1999) (A.R.S. § 13-4252 allows for admission of pretrial videotaped statement made by minor; this statute is both more restrictive and less restrictive than existing hearsay exceptions, and so it engulfs Rules of Evidence and is therefore unconstitutional).

802.110 Hearsay evidence that is improperly admitted may be harmless error.

State v. Lamar, 205 Ariz. 431, 72 P.3d 831, ¶¶ 38-44 (2003) (trial court had granted defendant's request to preclude evidence that Richard, in defendant's presence, threatened Hogan by asking her if she would like to be buried next to Jones (victim in this case); at trial, prosecutor asked Hogan if anyone made threats against her in defendant's presence, and she responded, "When Richard said they was [*sic*] going to bury me next to—," whereupon defendant objected and asked for mistrial, which trial court denied; court noted that trial court had concluded Richard's threat was hearsay, but concluded any error was harmless because (1) statement did not necessarily implicate defendant, and (2) trial court instructed jurors to disregard that testimony).

State v. Dickens, 187 Ariz. 1, 19, 926 P.2d 468, 486 (1996) (although theft report did not qualify as business record, because victim of theft testified to same information as in report, any error in admitting report was harmless).

April 10, 2013